

Remarks

In the office action mailed October 23, 2008, the Examiner maintained the rejection of claim 12 under 35 U.S.C. § 101 and maintained the rejection of claims 1-20 under 35 U.S.C. § 103. Applicants have reviewed the cited art and requests favorable reconsideration in view of the following remarks.

Applicants have cancelled claims 1-20, rendering the pending rejections moot, and has added new claims 21-40. Newly added claims 21, 26, 36, 37, and 40 are independent, and claims 22-25, 27-35, and 38-39 are dependent.

I. Response to Rejection of Claims under 35 U.S.C. § 101

While Applicants have canceled claim 12, new claim 40 is similarly drawn to instructions executable by a computer to perform output dithering. Applicants respectfully submit that claim 40 conforms to the guidelines as set forth by the Examiner.

II. Response to the Rejection of Claims under 35 U.S.C. § 103

The Examiner rejected claims 1-20 under 35 U.S.C. § 103 as being allegedly unpatentable over U.S. Patent No. 7,082,107 ("Arvelo") in view of U.S. Patent Publication No. 2005/0097409 ("Shin"). As noted above, Applicants have cancelled claims 1-20, rendering the pending rejections moot. With regards to new claims 21-40, Applicants respectfully submit that the previously cited references cannot form the basis for a *prima facie* case of obviousness for any of the newly added claims.

Independent claim 21 recites "responsive to determining the first error rate, re-transmitting the previously transmitted plurality of packets at a second output power, wherein the

second output power is different from the first output power.” Independent claims 26, 36, 37, and 40 recite similar language. *See* claim 26 (“responsive to determining that the first error rate is greater than the predetermined error rate value, re-transmitting the plurality of previously transmitted packets at a second output power”); claim 36 (“cause the transmitter to re-transmit the plurality of previously transmitted packets at a second output power in response to determining the first error rate”); claim 37 (“means for re-transmitting the plurality of previously transmitted packet at a second output power in response to determining the first error rate, wherein the second output power is different from the first output power”) and claim 40 (“responsive to determining the first error rate, re-transmitting the plurality of previously transmitted packets at a second output power, wherein the second output power is different from the first output power”). None of the asserted references, alone or in combination, teach these claim limitations.

Applicants submit that the combination of Arvelo and Shin does not reasonably or logically lead to the claimed invention recited by any of the independent claims. Neither Arvelo nor Shin disclose re-transmitting a plurality of data packets in response to determining an error rate. Rather, at most, Arvelo teaches potentially re-transmitting a single packet in response to receiving a negative acknowledgment (NACK) from a receiver that has performed a cyclic redundancy check on that particular packet. As such, the re-transmission in Arvelo is neither based on nor in response to the determination of an error rate.

Shin similarly fails to describe re-transmitting a plurality of previously transmitted packets at a different power level in response to the determining of an error rate. Figures 6 and 8 of Shin contain the otherwise unexplained statement “for the duration of DP, G and B decide if packet is retransmitted via ACK.” Shin does not disclose re-transmitting the same plurality of

packets, but rather teaches that different groups of packets are used to measure an error rate. *See* Shin [0063]. Thus, Applicants submit that the combination of Arvelo and Shin does not reasonably lead to the methods and systems described in the independent claims, and thus cannot establish a *prima facie* case of obviousness for independent claims 21, 26, 36, 37, and 40 or any of their dependent claims.

III. Conclusion

Applicants respectfully submit that all of the claims are patentable over the cited art. The Examiner is invited to call the undersigned at (312) 913-0001 with any questions or comments.

Respectfully submitted,

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